

Participant-Directed Programs Policy Collaborative
Emergency Call-In (only) Meeting
October 15, 2015

The meeting began at 11:30 am.

Participating:

Linda Andre, Christina Ulmer, Keith Copen, Rhyann Lubitz, Renee Walbert, Linda Skaflen, Margaret Proctor, Alisha Singleton, Kathy Estes, Jeff Epp, Katherine Carol, Debbie Miller, Renee Farmer, Kevin Smith, Curtis Wolff, Maria Rodriguez, Jason Smith, Tim Moran, Diane Alborichi, Kelly Brown, Craig Morrison, Leah McMahon, Brent Salner, Jenny Smith, Sharita Richmond, Betsy Murray, Rebecca Sturdevant, Karen Kalis, Julie Farrar, Jennifer Martinez, Kari Vinopal, Jeff Pratt, Connor McCloud, Evan Brent, Kristie Michael, Sueann Hughes, Dottie Neilson, Cathey Forbes, Mark Simon, Gabrielle Steckman, Heather Jones, Kirk Miller, Anaya Robinson, Caitlin Brady, Roberta Aceves, Bonnie Rouse, Julie Reiskin

Linda Skaflen reviewed who is eligible to vote today.

Tim Moran thought FMS should not have vote and they all agreed that this is consumer choice.

Rhyann: Last week was subcommittee meeting about the FLSA implementation and they decided an emergency call was needed to move forward. She appreciates the continued participation. John Barry sent out agenda yesterday, people not on email did not receive it but each person got a call. If they want mailed copy Rhyann will mail it—they can call her.

Agenda is regarding FLSA. We need to decide how we will implement for CDASS. We discussed this a little last month at PDPPC. This went into effect two days ago nationally and DOL enforcement date is 11/12/15. How are we going to manage travel time and overtime costs amongst our attendants under the AWC model?

Data from FMS vendors over last six months shows

- 5600 attendant time sheets more than 40 hours a week in past six months.
- 2100 were from multiple clients
- 400 + attendants work for multiple clients

FLSA requires under AWC that any attendants working for multiple clients need to be compensated travel time and overtime costs. Anyone working for single client has to be compensated for overtime.

Under FEA there are no travel time costs, overtime costs are attributed to a client who receives services as long as they are not using same EIN for multiple participants.

So how do we implement FLSA? There were 4 options laid out and Rhyann wanted to skip to option 4 which will have the most questions. This option is one she had hoped was to split OT and travel amongst clients who use the same attendant.

Rhyann gave an example:

Rhyann and Roberta are clients and hire Bonnie as attendant and between the two she works 50 hours a week—could OT and travel be split? Rhyann asked CMS and was told NO that in AwC overtime and travel time are not in control of clients therefore cannot come out of allocation. Therefore this is no longer an option.

Christina Ulmer said travel time should be paid by 2nd client but since this is a moot issue it does not matter. Someone said this is very complex given where clients and attendants live. Jeff Epp said FMS cannot police this. They cannot talk to clients about each other due to HIPAA and this is impossible to implement. Julie suggested we talk about the other three items only.

Mark asked about how does it work if someone is AR for multiple clients--- does each client have EIN but AR still does the work and would AR have obligation if clients share attendants? Jeff Epp said they asked the question when is client incapable of providing EIN? Is it only if they need a little help? What if they have a guardian and are not competent? We have not gotten solid answer. If each client has own EIN what falls on AR in terms of overtime? Answer is that it would be paid within the client allocation.

Christina Ulmer was told because she has LLC in her name she could not get EIN to do FEA. Julie and Keith both said this not accurate and Jeff agreed. PPL had told her this information. There was more discussion about this later.

Rhyann wanted to go through options 1-3

- 1) 40 hour a week cap across both models for all CDASS attendants. No overtime for anyone. Still travel time costs. Limit choice of attendants and requires regulation change. Don't know how travel time costs would be paid.
- 2) No attendant work for more than one client under AwC. OT comes from one client and no travel time.
- 3) Discontinue AwC—everyone uses FEA. No travel time, overtime costs are incurred by one client and met within allocation. Health and Welfare exception process for someone who could not meet needs re OT via ADA exception request. All AwC would have to do paperwork to FEA model

All require regulation changes.

She checked other states, majority are FEA only or if they have both models they are implementing caps.

- Texas-FEA only and have cap of 40 hours per attendant
- Wisconsin FEA only and 50 hours a week cap per attendant
- CA has built in 22 hours of overtime into allocations

- Kansas would not respond
- Other states did not respond

Question: Does OT include more than 12 hours in a shift-? Yes, you can work 12 hours a day and 40 hours in a week. More than that will require overtime.

Julie said there is no work difference for the client using FEA.

Keith said as peer trainer teaching both programs that neither puts you at risk because you never have the money in your hand, it goes to FMS, if they went bankrupt their assets would have to go to payroll because the law says that taxes and wages are always first. He said in FEA one is only at risk for their employees, which is usually 2-4 people. The small number of people also reduces risk.

Maria said she agreed with Julie and Jeff

Christina said FEA is easy model and her only concern is that she was not allowed to do FEA by PPL customer service. Julie said that we need to be sure that people who own a business can go to FEA. Rhyann asked for response from FMS agencies. Gabrielle said if you are not using your EIN then it can be released for other purposes. PPL does require person not have EIN for other purposes –in other words, you just cannot use the business EIN for CDASS work. You can have both a business and individual EIN. People with existing LLC can contact the IRS and get a different EIN number—it is possible one can be LLC and one can be individual. FMS would want individual EIN. Mark said he was concerned about liability –wanted to know why we could not have LLC or S corp to limit liability as our EIN. Gabrielle said FMS is accountable for that liability not the individual. Mark read from IRS regulations he then said that we must indemnify clients and should have a contract amendment with FMS to require surety bond.

Renee said that as authorized rep she is responsible for more than 2 attendants. She asked about workers comp. Rhyann said that we already

require workers compensation. Mark asked if the state have a policy to know that policy is in force? Yes it is part of contract. Mark said in PA they had 6 FMS go belly up and others that turned records to PPL and records showed employees with no W4 and no work comp. Julie said this is why to not have too many FMS agencies. Mark said state should still be notified if policies are cancelled in case someone is in trouble and state does not know.

Curt said that as a former contractor he always had to send a certificate of insurance and workers comp and that party was additionally insured they would be notified. This is what we want ----Mark said endorsement is different than additionally insured and we wanted endorsement. Mark said it costs nothing for insured to request endorsement be sent to someone. This is minor change in policy requiring FMS to make single phone call. Bonnie said they do send insurance documents annually and we are listed as additional insured, but she can require regular copies. Bonnie said we were more protected due to the way the FMS vendors get paid. FMS vendors have to make payroll first, then they can bill state and it is awhile out before they are paid so HCPF would know immediately if the FMS vendor did not have money and the state could jump in and take care of the taxes and payroll the way it is structured.

Leslie Ritzer is attendant for mother and brother that both live with her, hours vary and working over 40 hours is given. They are on AwC model. Rhyann said option 1 and 2 would require a cap of 40 hours a week ---if we keep both options we need to apply equally. Leslie said she could manage overtime without a change in allocation—she could adjust wages.

Rhyann also said that there are 23 attendants accessing health insurance and a move to FEA only would eliminate their health insurance. Bonnie said that open enrollment for exchange begins 11/1 and is open for some period of time so they should be able to enroll then. Even if they miss this deadline the change in models would be change of circumstance so they

should be able to enroll any time. Bonnie is doing some research to see if we have contact with the Exchange to get them help enrolling.

We need to have vote—do we have a cap or FEA model

Maria said she is former business owner, she is FEA and signed up with Morning star and IRS had to look up former EIN and had to get new one and very little problem. Leslie said with EIN still subject to audit, Jeff said FMS is the one that is liable

Julie moved to go to FEA only with some provisions:

- 1) Clarify FMS has liability
- 2) Give insurance endorsement to state for workers comp, general and employer liability
- 3) Consumer Direct/FMS has to assist clients with change

Discussion:

Surety bond discussion: There was discussion about usefulness of this and cost and terms.

There was discussion about indemnification and what if anything that costs. Mark said he wanted it because if there was a problem it would make it possible to get attorneys because attorney fees are covered.

Rhyann said any changes to contract might affect costs of FMS because no extra money is allocated for agency based care for FLSA and under regulations and the waiver the costs of CDASS and agency care are tied together. She said the goal is to keep the program going and keep CDASS sustainable long term for all of us.

Julie Restated motion and Jeff Epp seconded: FEA only with as many protections as possible: The motion passed. Christina and Mark both said their vote was with understanding we continue to pursue adequate protections.

Keith voted no, Kathy Forbes abstained as did all three FMS vendors.

THE MOTION CARRIED:

Follow up: MSB meeting for emergency rule change is 12/11 and we can talk more at PDPPC about the transition. Open enrollment is waived people can move to FEA now and if in AwC can choose to change FMS now also. If you are already in FEA you can move vendors 1/1/2016.

Rhyann said that the last meeting was recorded and we are having a challenge getting the minutes to Julie for typing because the file is too large. She asked if it is ok for her to type them one time. She can listen to it but just cannot get it to Julie. Mark said keep recording, if someone wants to come to HCPF and listen they are welcome.

Keith—do we know when people have to make the change. Rhyann is bringing the decision of this group to leadership and she says people can start moving as soon as possible but she needs to firm up all of the procedures. Leslie –FMS should let people know what model they have. There have been a lot of changes and people are confused. The FMS will contact each client and AR that are affected. There are many details that need to be addressed. Individuals that are sharing attendants need to be transferred as soon as possible. We need to figure out the timeframes from FMS. This has to be collaborative process.

There may be road bumps but we need to work together to figure it out. If people do not like customer service you can change FMS agencies.

Maria said we need to make efforts to do better job educating people.

Rhyann thanked people for attending the emergency meeting. There are a lot of resources such as consumer direct and FMS to assist in the transition.

The meeting adjourned at 1:17 PM.